

AMENDED AND RESTATED ASSIGNMENT OF LEASES JUL 6 1989 -11 50 AM

INTERSTATE COMMERCE COMMISSION

ACF INDUSTRIES, INCORPORATED, a New Jersey corporation with its principal place of business at 1370 Avenue of the Americas, New York, New York 10019 (hereinafter referred to as the "Assignor"), in consideration of One Dollar (\$1.00) lawful money of the United States of America and other good and valuable consideration, the receipt of which is hereby acknowledged, has sold, assigned, transferred and set over, and by this instrument does sell, assign, transfer and set over, unto NORSTAR BANK, a national banking association, having an office at 40 Main Street, Hempstead, New York 11511 (the "Bank") pursuant to the Amended and Restated Bridge Loan, Chattel Mortgage and Security Agreement dated the date hereof (such Agreement, as the same may from time to time be modified, amended, supplemented or restated, is hereinafter referred to as the "Loan Agreement") between, inter alia, the Assignor and the Bank, and unto the Bank's successors and assigns, to its and to its successors' and assigns' own proper use and benefit, all the right, title and interest of the Assignor under, in and to the railroad equipment lease agreements described on Schedule I annexed hereto, each of which is between the Assignor, as lessor, and a certain second party, as lessee (herein called the "Lessee"), and any equipment schedules, or other schedules, riders, addenda and supplements' executed pursuant thereto, or attached thereto, as any such documents may have been or may be amended, modified, restated or supplemented from time to time (said leases and schedules, riders, addenda and supplements as amended, modified, restated or supplemented from time to time, being hereinafter referred to individually as a "Lease" and collectively as the "Leases"), including, without limitation the following:

(a) all rental payments and other moneys, including all insurance payments and claims for losses, due and to become due to the Assignor under, and all claims for damages arising out of the breach of, the Leases,

(b) the right of the Assignor to terminate any of the Leases,

(c) the right of the Assignor to perform thereunder,

(d) the right of the Assignor to compel performance of the terms thereof;

(e) any guarantee of any of the Leases and any rights of the Assignor in respect of any subleases permitted under any of the Leases; and

(f) all products and proceeds of any of the foregoing, including without limitation claims of the Assignor against third

parties for loss or damage to or destruction of any of the foregoing.

This Assignment is granted and delivered as security for:

(i) the prompt payment, as and when due and payable, of the principal of and the interest on all of the sums borrowed by the Assignor from the Bank under the Loan Agreement; and

(ii) the prompt payment, performance and observance of all other indebtedness, obligations, liabilities and agreements of any kind of Assignor to the Bank, now existing or hereafter arising, absolute or contingent, due or not, contractual or tortious, liquidated or unliquidated, arising under (i) the Loan Agreement, (ii) the Note (as defined in the Loan Agreement) by the Assignor to the order of the Bank, whether now existing or hereafter arising, or (iii) this Agreement as any of the same may from time to time be modified, amended, supplemented or restated (all of the foregoing being herein referred to as the "Obligations").

The Assignor does hereby agree as follows:

1. (a) The Assignor shall remain liable under each of the Leases to perform all the obligations to be performed by it thereunder, all in accordance with and pursuant to the terms and provisions of the Leases, and the Bank shall have no obligation or liability under any Lease by reason of or arising out of this Assignment, nor shall the Bank be required or obligated in any manner to perform or fulfill any of the obligations of the Assignor under or pursuant to any of the Leases, or to make any payment, or to make any inquiry as to the nature or the amounts which may have been assigned to it or to which it may be entitled at any time or times.

(b) So long as no Event of Default (as such term is defined in the Loan Agreement) shall have occurred and is continuing, the Assignor shall be entitled to exercise its rights as lessor under the Leases (including, without limitation, the right to collect rents due thereunder), subject to the other terms and conditions hereof.

2. The obligations of the Assignor under the Leases may be performed by the Bank or its nominee, but only at the option of the Bank from and after the date of the occurrence of an Event of Default (as such term is defined in the Loan Agreement), without releasing the Assignor therefrom and without providing for or resulting in any assumption of liability thereunder.

3. The Assignor does hereby constitute the Bank, its successors and assigns, the Assignor's true and lawful attorney, irrevocably, with full power and power of substitution, in the name of the Assignor or otherwise (effective on the date hereof but to be exercised only following the occurrence and during the continuance of an Event of Default), to ask, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due and to become due under or arising out of the Leases or any guarantees thereof or subleases permitted thereunder, to execute proofs of claim and loss, to adjust and compromise any claims under insurance policies or otherwise, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Bank may deem to be necessary or advisable in the premises. All acts done by the Bank under the foregoing authorization are hereby ratified and approved and neither the Bank nor any designee or agent thereof shall be liable for any acts of commission or omission (other than acts committed or omitted through gross negligence or willful misconduct), for any error of judgment or mistake of facts or law. This power of attorney being coupled with an interest is irrevocable while any of the Obligations shall remain unpaid.

4. The Assignor agrees that at any time and from time to time, upon the written request of the Bank and at the expense of the Assignor, the Assignor will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Bank may reasonably deem desirable in obtaining the full benefits of this Assignment and of the rights and powers herein granted, including, without limitation:

(a) the filing or recording of this Assignment (or any amendment or supplement thereto), or a financing or continuation statement or statements with respect hereto or thereto in accordance with the laws of any applicable jurisdiction, and the Assignor hereby authorizes the Bank to effect any such filing or recording as aforesaid (including the filing of any such financing statements or amendments thereto without the signature of the Assignor), and the Bank's filing fees with respect thereto shall be payable by the Assignor on demand; and

(b) the taking of such further action as the Bank may deem desirable to protect fully the Bank's interests hereunder in accordance with the Interstate Commerce Act, the Uniform Commercial Code, the laws and regulations of the Interstate Commerce Commission or any other applicable law.

5. The Assignor at its sole cost and expense will appear and defend any suit, proceeding or action under any of the Leases or sublease permitted thereunder, for any installment of, or interest on, any rental or other sum owing thereunder, or

to enforce any provisions of a Lease or sublease permitted thereunder, and the Assignor will save, indemnify and keep the Bank harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of the Lessee, or sublessee thereunder or its successors, arising out of a breach by the Assignor of any obligation under any of the Leases or any sublease permitted thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of the Lessee or any such sublessee or its successors from the Assignor, and all such obligations of the Assignor shall be and remain enforceable against and only against the Assignor.

6. The Assignor hereby represents, warrants and covenants that:

(a) it is the sole owner of the Leases;

(b) the equipment which is the subject of each of the Leases and in which the Bank has been granted a security interest pursuant to the Loan Agreement (including, without limitation, the Equipment described on Annex A to Schedule I hereto) (all of the above-described equipment, the "Equipment") has been delivered to and accepted by the Lessee;

(c) there are no liens or encumbrances against any of the Leases or any subleases permitted thereunder or any guarantees thereof, nor shall there be any such liens or encumbrances at any time hereafter, except for liens on the Leases to the extent but only to the extent that the Leases are applicable to railroad equipment other than the Equipment;

(d) there have been no prepayments by the Lessees of any sums under any of the Leases;

(e) to the best of the Assignor's knowledge, no default exists under any of the Leases; and

(f) (i) The rights of the Assignor, as lessor, to the rents and other rights under each of the Leases, are good and valid claims enforceable according to their terms, free from any defenses, rights of offset, claims or counterclaims on the part of a Lessee thereunder and have not been pledged, sold, assigned or transferred to any person other than the Bank as contemplated by this Assignment;

(ii) The Assignor has duly performed and is duly performing its duties as lessor under each of the Leases and the Lessee is duly performing its duties under each of the Leases and there is no default or dispute thereunder to the best of the Assignor's knowledge;

(iii) Each of the Leases has been duly authorized, executed and delivered by the parties thereto, is in full force and effect and is enforceable in accordance with its terms; and

(iv) The Assignor has the right, power and authority to assign its right, title and interest in and to each of the Leases to the Bank.

7. The Assignor covenants and agrees that until payment, performance and satisfaction in full of the Obligations it will:

(a) Maintain or cause the Lessee under each Lease to maintain the Equipment in good repair, working order and condition, subject to normal wear and tear, and make all reasonable repairs, replacements, additions and improvements thereto.

(b) Duly perform all of its obligations under each of the Leases and do or cause to be done all things necessary to keep each of the Leases in full force and effect.

(c) Give notice in writing promptly to the Bank of (i) the occurrence of any event which constitutes, or which with notice or lapse of time or both, would constitute an Event of Default; and (ii) any material default under any of the Leases or any material claim or dispute with the Lessee under any of the Leases, and at the request of the Bank, promptly notify and turn over to the Bank a true and complete copy of each notice, request, consent or demand received pursuant to or in connection with any of the Leases.

(d) Execute and deliver such further or additional instruments and assurances, and take all such additional action as the Bank may reasonably require for the purpose of carrying out the provisions of this Assignment of Leases.

(e) At its sole cost and expense seek to cause the Lessees to comply with and observe all the terms and conditions of the Leases (and without limitation of the foregoing exercise at its sole cost and expense such remedies under the Leases as the Bank may from time to time reasonably direct), and not cancel, amend, modify or supplement any of the Leases or enter into any agreement to do so or deliver any notice of termination of any Lease or permit or accept the surrender or termination of any Lease or waive, settle or compromise any claim against the Lessee under any Lease or extend any time for any payment by the Lessee under any Lease or consent to the creation or existence of any lien or security interest on the Lessee's leasehold under any Lease.

8. If there shall be a default under any Lease on the part of the Assignor, for any reason, the Bank may, at its option, without assuming any of the obligations of the Assignor under such Lease and without waiving or releasing the Assignor from any of the terms hereof or any of the Obligations, cure the default, and the cost of curing the same (and all necessary and incidental costs and expenses of the Bank in connection therewith, including, but not limited to, reasonable counsel fees), with interest at the highest rate payable on the Obligations from the time of the advance or advances therefor, shall be deemed an advance to Assignor and part of the Obligations, and shall be due and payable by the Assignor to the Bank upon demand.

9. Following the occurrence and during the continuance of an Event of Default, in addition to all other rights and remedies of the Bank pursuant to any agreements of the Assignor in favor of or assigned to and held by the Bank or pursuant to applicable law or otherwise, the Bank or its successor or designee shall have all rights and benefits under the Leases, including, without limitation, any and all rights to indemnification and guarantee, without modifying or discharging any of the Obligations. Upon the occurrence and during the continuance of any such event of default, the Assignor agrees to execute any and all documents requested by the Bank in its sole discretion to enable the Bank to exercise all of the rights of the Assignor under the Leases. The specified remedies to which the Bank may resort under the terms of this Assignment are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the Bank may be lawfully entitled in case of any breach or threatened breach by the Assignor of any provision hereof or of any of the Obligations. Nothing contained in this Assignment and no act or action taken or done by the Bank pursuant to the powers and rights granted it hereunder or under any instrument collateral hereto shall be deemed to be a waiver by the Bank of any of its rights and remedies against the Assignor in connection with, or in respect of, any of the Obligations. The right of the Bank to collect and enforce collection of the Obligations and to enforce any security and collateral held by it may be exercised by the Bank either prior to, simultaneously with, or subsequent to any action taken by the Bank hereunder.

10. Following the occurrence and during the continuance of any Event of Default, any moneys or other proceeds under or in connection with any of the Leases received by the Assignor shall not be commingled with any other property of the Assignor, but shall be segregated, held by the Assignor in trust for, and immediately delivered to, the Bank for application to the payment of the Obligations.

11. The Bank may take, or release, other security which it may hold for the payment of the Obligations, may release

any party primarily or secondarily liable therefor, and may apply any other security held by it to the satisfaction, or partial satisfaction, of such Obligations, without prejudice to any of its rights under this Assignment.

12. The Assignor shall cause copies of all notices received in connection with any Lease and any guarantee thereof which are requested by the Bank to be promptly delivered to the Bank at 40 Main Street, Hempstead, New York 11511, or at such other address as the Bank shall have designated in writing.

13. This Assignment shall be binding upon the Assignor and its successors, and shall inure to the benefit of the Bank, including its successors and assigns.

14. This Assignment shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and wholly performed in that state.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be executed as of this 30 day of June, 1989.

ACF INDUSTRIES, INCORPORATED

[CORPORATE SEAL]

By: 

Name:

Title:

Robert Mitchell
Treasurer

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On the day of June, 1989, before me personally
appeared Robert Mitchell, to me personally known, who being
by me duly sworn, did depose and say that he is the
Treasurer of ACF INDUSTRIES, INCORPORATED, that the
seal affixed to the foregoing instrument is the corporate seal of
said corporation, that said instrument was signed and sealed on
behalf of said corporation by authority of its Board of Direct-
ors, and he acknowledged that the execution of the foregoing
instrument was the free act and deed of said corporation.

Sarah C. Kibbe
Notary Public
My Commission expires _____

SARAH C. KIBBE
Notary Public, State of New York
No. 24-4844567
Qualified in Kings County
Commission Expires November 30, 1989

SCHEDULE I
TO
AMENDED AND RESTATED
ASSIGNMENT OF LEASES
BETWEEN
ACF INDUSTRIES, INCORPORATED
AND
NORSTAR BANK

All leases, agreements for use, car service contracts and master service contracts covering or relating to, and only to the extent covering or relating to, any of the railroad rolling stock bearing the car numbers listed on the attached Annex A.

ANNEX "A"

<u>CAR NUMBERS</u>	<u>NO. OF CARS</u>	<u>AAR DESG.</u>	<u>COST</u>
ACFX 41185 - 41188	4	C214	\$ 202,072
" 41501 - 41600	100	"	2,711,300
" 65357 - 65377	21	"	994,728
" 65858 - 65862	8	C414	406,224
" 65865 - 65866			
" 65869			
" 51689 - 51690	2	C614	123,560
" 51695	1	"	63,950
" 51733	52	"	3,217,864
" 51735 - 51785			
" 51786 - 51795	10	"	619,580
" 51843 - 51851	9	"	570,996
" 51909 - 51910	2	"	129,618
" 51911 - 51920	10	"	641,580
" 41651 - 41674	24	C714	1,165,944
" 72793	1	T054	46,860
" 72863 - 72864	12	"	448,560
" 72866			
" 72868			
" 72870 - 72875			
" 72877			
" 72880			
" 72833	20	T104	806,514
" 72835 - 72837			
" 72840 - 72844			
" 72846 - 72853			
" 72855 - 72857			
" 72777	1	T105	49,739

<u>CAR NUMBERS</u>	<u>NO. OF CARS</u>	<u>AAR DESG.</u>	<u>COST</u>
ACFX 72778 - 72792	15	T105	\$ 819,960
" 72523 - 72524	19	T106	916,180
" 72526			
" 72530 - 72531			
" 72534 - 72535			
" 72538 - 72549			
" 72757 - 72775	19	T107	1,092,747
" 72794 - 72817	24	"	925,056
" 72699 - 72700	7	T108	384,307
" 72706			
" 72710			
" 72712			
" 72717 - 72718			
" 72881 - 72895	15	T108	625,950
" 77429	<u>1</u>	T564	<u>62,302</u>
Totals	377		\$19,025,591